

December 2008

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## Hunton & Williams Assists Austrian Railway Company to Become Europe's Third-largest Rail Cargo Provider

On 25 November 2008, the European Commission ("Commission") cleared the acquisition of Hungarian MÁV Cargo by Rail Cargo Austria ("RCA"), a wholly owned subsidiary of the state-owned Austrian railway company ÖBB. The deal will create Europe's third-largest rail cargo provider (after Deutsche Bahn's Railion and SNCF). The clearance was issued subject to conditions after an extended "Phase I" review in a challenging political and economic environment.

The case was time sensitive and raised numerous substantive and procedural issues:

With regard to procedure, for the first time under EC merger control, the Commission used Article 5(3) of the Implementing Regulation to rewind the clock. Under this procedural rule, the Commission decided that the notification (originally filed on 25 August 2008) should be treated as "effective" only from 7 October 2008, the date on which "new material facts" concerning the deal were received by the authority. Interestingly, the Commission used Article 5(3) instead of the traditional "stop-the-clock" approach (used occasionally in "Phase I", a recent example being

[Delta/Northwest](#), a merger on which Hunton & Williams advised as well), in order to avoid a lengthy and burdensome in-depth investigation in "Phase II".

With regard to the merits, the Commission was concerned about the elimination of potential competition on the rail cargo markets in Austria and Hungary respectively. To address these concerns, in addition to certain commitments made by the parties, the Commission also required "declarations" by the Member States Austria and Hungary (as the parties' ultimate parents) which were used as factual basis for its clearance decision. Member State declarations are rather rare and in this case — due to the elections in Austria and the financial crisis — were particularly difficult to secure under the tight EC merger control deadlines.

Hunton & Williams' Brussels office managing partner Dr. Michael Rosenthal acted as co-counsel together with Dr. Dieter Thalhammer, partner at Austrian law firm Eisenberger & Herzog in Vienna, to advise RCA on the complex merger proceedings before the Commission. They were supported by Dr. Alexandra Brandenburg, Daniel Francis, and

Alexandros Papanikolaou in Brussels and Marco Steiner and Stefan Onzek in Vienna (see [press coverage in GCR](#)).

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Hunton & Williams' Global Competition Practice combines high-level government and private litigation experience. Working from offices in the U.S., in Europe, and in Asia, the group serves clients on all aspects of competition law.

Lawyers involved in counseling RCA on the EC merger control proceeding are part of the firm's strong and growing Brussels practice, providing the full range of competition law advice at EU as well as Member State level.

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